HONOURABLE SMT. JUSTICE T.MEENA KUMARI
&
HONOURABLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No:12608 OF 2007

Dated: 18.06.2007

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Between:

Syed Haneef and others

..Petitioners

And

1. The Commissioner of Prohibition &
   Excise, Government of A.P., Hyderabad and others.

..Respondents

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HONOURABLE SMT. JUSTICE T.MEENA KUMARI
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HONOURABLE SRI JUSTICE G. CHANDRAIAH

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ORDER: (per Hon'ble Smt. Justice T. Meena Kumari)

The present writ petition is filed aggrieved by the order, dated 5.9.2006 passed by the A.P. Administrative Tribunal in O.A.No.2083 of 2006.

The petitioners herein are the applicants before the Tribunal.

Originally, the petitioners along with another filed the O.A. seeking a declaration that the action of the respondents purporting to relieve the applicants from the posts of Prohibition & Excise Sub Inspectors I/C without following the principle of last come first go and also without taking into account the undertakings and conditions imposed in the posting orders as illegal and arbitrary and also to declare the proceedings 6.4.2006 passed by the Deputy Commissioner of Prohibition & Excise, Guntur as illegal.

The Tribunal having observed that the posting of the applicants as well as the unofficial respondents as In charge Sub-Inspectors is contrary to Rule 10(h) of the A.P. State & Subordinate Service Rules and therefore, neither the applicants nor the respondents can have any claim to continue as In charge Sub-Inspectors, disposed of the above O.A. directing the official respondents to take action in terms of Rule 10(h) of the A.P. state & Subordinate Service Rules for placing the matter before the DPC., for considering adhoc promotions or full additional charge arrangements, as contemplated under the Rules, if the posts cannot be filled up on regular basis

and if administrative exigency so demands, to invoke Rule 10(a)(i) read with Rule 10(h) of A.P. State & Subordinate Service Rules.

Heard the learned Counsel for the petitioners as well as the learned Government Pleader for Services-II.

It is the case of the petitioners-applicants that they were fully qualified to hold the post of Sub-Inspectors of Proh. & Excise and that they were appointed as incharge Sub-Inspectors in July, 2003 against the existing regular vacancies. Subsequent to their appointment as Incharge Sub-Inspectors, some of the Head Constables including the unofficial respondents were also appointed as Incharge Sub Inspectors. At the time of the appointment of the petitioners, vacancies reserved for promotees and earmarked for excise Head Constables were available, but the authorities have not filled up those vacancies by giving regular promotion, but given promotion by making in charge arrangements. The said appointment of the petitioners as in charge Sub Inspectors ought to have been treated as adhoc promotion and converted as regular Excise Sub Inspectors inasmuch as the authorities have made in charge arrangement after following the entire procedure prescribed under the rules including the rule of reservations.

On 6.4.2006, the 2nd respondent issued the proceedings reverting the petitioners and others to a lower post ie., Junior Assistants/Excise Head Constables, without following the principle of Last come First go, on the ground that the direct recruitees have reported to duty. It is also the case of the petitioners that even after disposal of the O.A., the authorities have still made in-charge arrangement, but unfortunately, while making so, the case of the petitioners has not been considered.

On the other hand, it is the case of the official respondents that 26 direct recruitees have already reported for duty and therefore, the services of 25 In charge Sub Inspectors were withdrawn.

In the instant case, the in charge arrangements for the post of Sub-Inspector, Proh. & Excise Department, were made by the 2nd respondent in exigency for the sake of running the Excise Administration smoothly and controlling the excise crimes. The proceedings issued in this regard goes to show that the said arrangement is purely on a temporary basis and does not count for protection of any pay and seniority, right or claim for promotion against the post of Prohibition & Excise Sub-Inspector and the said in charge arrangement to the posts earmarked for direct recruitees is till the candidates selected by APPSC and report for appointment.

At this juncture, it is also pertinent to note Rule 10(h) of A.P. State & Subordinate Service Rules:

> "The practice of making in charge arrangement on own scale of pay of the incumbent concerned is totally prohibited and whenever filling up of vacant posts is considered expedient in the exigencies of administration, action may be taken to fill the post following the relevant Special/Adhoc Rules, duly placing the proposals before the DPC/APPSC as the case may be or by making full additional charge arrangements as provided for in the Fundamental Rules".

On perusal of the proceedings issued by the 2nd respondent while appointing the petitioners as In charge Sub-Inspectors, it is obvious that the appointment is purely temporary. Apart from that, the above rule clearly goes to show that the appointment of Incharge Sub-Inspectors is contrary to the same. It is also clear that there is no relaxation of rules in making such incharge arrangements.

In that view of the matter and in view of the conditions stipulated in the proceedings issued by the 2nd respondent while appointing the petitioners as In charge Sub-Inspectors, we hold that the petitioners cannot have any claim, as a matter of right. However, considering the length of service of the petitioners as well as the eligibility to hold the post of Sub-Inspectors, the official respondents are directed to consider the case of the petitioners for promotion as per the rules and as per the direction of the Tribunal as to the invoking of Rule 10 (a) (i) read with Rule 10(h) of A.P. State & Subordinate Service Rules in case of administrative exigency.

Subject to the above modification, the writ petition is disposed of. No order as to costs.

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Justice T. Meena Kumari

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Justice G. Chandraiah

Date: 18th June, 2007
Nn/Gurc.

HONOURABLE SMT. JUSTICE T.MEENA KUMARI

&
HONOURABLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No:12608 OF 2007

(Order delivered by the Hon'ble Smt. Justice T. Meena Kumari)

18/06/2007

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